

9/21/16



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SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES

CYNTHIA ANDERSON-BARKER,

Petitioner,

vs.

CITY OF LOS ANGELES,

Respondent.

CASE NO. BS 159845

Assigned to the Hon. Carolyn O’Donnell
Judge of the Superior Court
Department 86

**MEMORANDUM OF POINTS AND
 AUTHORITIES IN OPPOSITION TO
 PETITION FOR WRIT OF MANDATE
 COMPELLING DISCLOSURE OF PUBLIC
 RECORDS ETC. (Gov. Code §6258)**

Date: October 19, 2016

Time: 9:30 a.m.

Dept: 86

Petition for Writ of Mandate filed January 27, 2016

On January 27, 2016, petitioner CYNTHIA ANDERSON-BARKER filed a petition for writ of mandate to compel disclosure of nine categories of alleged “public records” under the enforcement provisions of the California Public Records Act (CPRA), Government Code §6258. Inexplicable she is seeking an Order to compel disclosure of documents which were never the subject of her original CPRA request (“Administrative Record” [sic] Exhibit A) or her petition.

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1 The CPRA does not require disclosure of documents which were never requested or which
2 never existed; the petition for writ of mandate should be denied for that reason alone.

3 For the following reasons, petitioner is not entitled to a writ of mandate to compel disclosure
4 of any of the documents belatedly described in her supporting brief.

5
6 **I. PETITIONER IS NOT ENTITLED TO DISCLOSURE “FOR VEHICLES**
7 **SEIZED ANYTIME FROM JANUARY 1, 2008, TO THE PRESENT,
8 **REDACTED CHP 180 FORMS DOCUMENTING VEHICLE SEIZURES**
9 **MADE AT THE DIRECTION OF A CITY EMPLOYEE PURSUANT TO**
10 **CAL. VEH. CODE §21100.4”****

11 **Categories of Documents: CHP 180**

12 Paragraph 6 of the petition sought the following:

13 “From January 1, 2008 through the present, all CHP 180 forms where a vehicle was seized
14 pursuant to Cal. Veh. Code §21100.4 and at the direction of an employee of the City of Los Angeles”.

15 Petitioner has never sought “redacted CHP 180 forms” in any CPRA request. The moving
16 papers have only the vaguest description of what “redactions” she would like to see applied. Neither
17 the petitioner’s original request for public records under CPRA (Petitioner’s “Administrative Record
18 (sic) Exhibit A pg.01) nor the petition call for redacted versions of the above-described CHP 180
19 forms.

20 “A CHP 180 form is used by the sheriff’s department to document when a vehicle is towed to
21 be stored or impounded, effectively removing it from the owner’s control and temporarily depriving
22 the owner of possession.” *County of Los Angeles v. Superior Court etc.* (2015) 242 Cal. App. 4th 475,
23 478.

24 In *County of Los Angeles*, the court held that the CHP 180 form is exempt from CPRA disclosure
25 under Government Code §6254, subdivision (k):

26 *Section 6254, subdivision (k) exempts disclosure of “[r]ecords, the disclosure of which is exempted or*
27 *prohibited pursuant to federal or state law.” “As is evident from the statutory language, this*
28

1 law. [Citations.]] (*CBS, Inc. v. Block* [, *supra*,] 42 Cal.3d [at p.] 656) In 1998, the Legislature
2 added an article to the CPRA specifically 'list[ing] and describ[ing]' over 500 statutes that provide
3 disclosure exemptions through *Government Code* section 6254, subdivision (k). (*Gov. Code*, § 6275;
4 see also *id.*, §§ 6276-6276.48.)" (*Copley, supra*, 39 Cal.4th at p. 1283.) Among the listed statutes are
5 *section 6254.1 of the Government Code* and *section 1808.21 of the Vehicle Code*. (§ 6276.38.) "The
6 statutes and constitutional provisions listed and described may not be inclusive of all exemptions." (§
7 6275; see § 6276.) *County of Los Angeles supra* at 478.

8 The *County of Los Angeles* court further explained why CHP 180 forms fall squarely within the
9 exemptions to disclosure described in *Government Code* section 6254.1 and *Vehicle Code* section
10 1808.21:

11 The CHP 180 forms fall under the *section 6254, subdivision (k)* exemption because both
12 *section 6254.1 of the Government Code* and *section 1808.21 of the Vehicle Code* prohibit disclosure
13 of a vehicle owner's address retrieved from DMV records. *Vehicle Code* section 1808.21 allows for a
14 DMV record to be disclosed to a "law enforcement agency," such as the sheriff's department in this
15 case. When the deputy sheriff fills out a CHP 180 form when storing or impounding a vehicle, he or
16 she retrieves the names of the registered and legal owners and their addresses from either the
17 registration paperwork or a registration check of the vehicle with the DMV database through CLETS.
18 Because this personal information originated from DMV records and was retrieved by an statutorily
19 authorized agency, each CHP 180 form remains protected from nondisclosure under *Vehicle Code*
20 *section 1808.21* and therefore also within the protection of section 6254.1, part of the CPRA. *Id* at
21 484-485

22 There is no meaningful difference between the CPRA request made by Cynthia Anderson-
23 Barker, the Real Part in Interest in *County of Los Angeles* and the CPRA request made by her upon
24 the City of Los Angeles described in paragraph 6, pg. 2 lines 23 to 25 of her petition, and in her
25 demand letter to City agencies dated December 15, 2015, Exhibit A to her "Administrative Record
26 [sic] etc." accompanying her opening brief. She requested unredacted CHP 180 forms in her CPRA
27 request and her Petition for Writ of Mandate, the very forms which the court in *County of Los*
28 *Angeles* held that she is not entitled to: end of story.

1 Aside from the fact that she has never previously requested “redacted” documents or described
2 any “redactions” to be applied, disclosure of CHP 180 forms should be rejected because:

3 1. The petition was filed on January 27, 2016, and after the decision in *County of Los Angeles*
4 became final. Even with actual knowledge of the holding in *County of Los Angeles* filed November
5 20, 2015, petitioner still decided to seek CHP 180 forms without any suggestion of redaction in her
6 petition.

7 2. By waiting until late in this litigation to describe some sort of “subset” of redacted CHP 180
8 forms which petitioner opines can be created, petitioner has prevented the City of Los Angeles from
9 fulfilling its duty to cooperate with a requesting party to ascertain the specific documents sought in a
10 CPR request, or to conduct meaningful discover or investigations within the Department of
11 Transportation regarding feasibility of redaction, assuming without conceding that petitioner is
12 entitled to such documents.

13 3. The *County of Los Angeles* court considered evidence that the agency, if redacted documents
14 were allowed, would be required to review and redact 215,000 documents. By waiting until its
15 opening brief to mention “redactions”, the City of Los Angeles has been denied an opportunity to
16 discern exactly how many redactions to how many documents would have to be effected, except the
17 number would be substantially high as with the County. There is no evidence from the petitioner on
18 this subject, although many thousands of related documents have been produced.

19 4. In responding to a CPRA request, the agency is not required to create new documents. If the
20 City of Los Angeles is required to “cut and paste” a document fitting the apparent descriptions in the
21 moving papers, the City would effectively be ordered to create a previously non-existent document.
22 See Declaration of Gerald Sato ¶¶3 through 5.

23
24 **II. PETITIONER IS NOT ENTITLED TO DISCLOSURE OF VIIC DATA**
25 **BECAUSE THE CITY OF LOS ANGELES DOES NOT HAVE POSSESSION**
26 **OF SUCH DATA.**

27 **Categories of Documents: VIIC**

28 The moving papers seek disclosure of:

1 “For vehicles seized anytime from January 1, 2008, to the present, certain VIIC computer data
2 regarding vehicle seizures made at the direction of a City employee pursuant to Cal. Veh. Code
3 §21100.4”

4 However, neither the petition nor petitioner’s initial request under CPRA were limited to
5 “certain VIIC computer” data, not were there any requests for redactions, edits, etc.

6 “• From January 1, 2008 through the present, all VIIC data CHP forms where a vehicle was seized
7 pursuant to Cal. Veh. Code §21100.4 and at the direction of an employee of the City of Los Angeles.
8 (VIIC means Vehicle Information Impound Center)” Petition ¶6.

9 Petitioner is not entitled to a writ of mandate compelling disclosure of documents not described
10 in the petition. Again, the variance between petition and moving papers is sufficient ground to deny
11 the writ of mandate.

12 Petitioner has submitted a declaration of Dwight W. Cook apparently to establish that
13 redactions could be made easily to electronically-stored versions of VIIC data and the redacted
14 documents received. Petitioner never amended her petition to seek VIIC data redacted or edited in
15 any form; the City has been denied an opportunity to challenge such an amended petition through
16 demurrer, or to conduct discovery on the issues upon which Dwight W. Cook purports to testify. The
17 City has not been afforded an opportunity to present expert witness testimony to respond to Dwight
18 W. Cook’s testimony, as the issue of whether particular electronically-stored documents can be
19 redacted. Again, the petition should be denied for this reason alone. No effort has been made to lay a
20 foundation for Dwight W. Cook to testify as an “expert witness”, and the opinions he has expressed
21 in his declaration should not be considered by the court.

22 And while the declaration of Dwight W. Cook has several defects discussed specifically in
23 objections lodged with these opposition papers, petitioner has cavalierly ignored the fact that an
24 identical petition under CPRA to compel disclosure of VIIC data has been rejected by this court for
25 the simple reason that the City, while having access to the data, does not possess or control the VIIC
26 data.

27 Thus, in *Colleen Flynn v. City of Los Angeles*, BS 147850 Judge Chalfant of this court
28 considered the issue of whether the City actually had possession of VIIC data. The court observed

1 that CPRA does not require agencies to retrieve documents from private contractors, citing *Filarsky*
2 *v. Superior Court* (2002) 28 Cal. 4th 419, 425. The court also noted that it is the petitioner who
3 carries the burden of proof to establish “that records in question (1) qualify as public records and (2)
4 are in the City’s possession”, citing *Consolidated Irrigation District v. Superior Court* (2012) 205
5 Cal. App. 4th 697, 709. Regardless of the access which the City had to VIIC data, and relying upon
6 the terms of the City’s contracts with its private contractors for VIIC data processing—OPG and
7 Laserfiche—the court found that the City did not have possession of VIIC data and therefore denied
8 the petition for writ of mandate. Request for Judicial Notice in Opposition to Petition for Writ of
9 Mandate filed herewith.

10 The contract between the City and OPG is part of petitioner’s “Administrative Record Exhibit
11 H”. The evidentiary record on the issue of possession is identical between the *Flynn* and present
12 *Anderson-Barker* cases. The City does not possess the VIIC data, and the petition should once again
13 be denied.

14
15 **III. PETITIONER IS NOT ENTITLED TO DISCLOSURE OF AN OCTOBER 7, 1996**
16 **LADOT MEMORANDUM, EVEN IF THE DOCUMENT EXISTED AND WAS IN**
17 **THE CITY’S POSSESSION.**

18 **October 7, 1996 LADOT memorandum**

19 This court is not required to have to guess which category of documents described in the
20 petition and petitioner’s original CPRA request to the City is supposed to include the October 7th
21 memorandum, and the moving papers give no clue. Paragraph 6 of the petition does seek disclosure
22 of:

- 23 •All the City of Los Angeles’ policies relating to Cal. Gov’t Code §53075.61 . . .
24 •All the City of Los Angeles’ policies relating to Cal. Veh. Code §21100.4 . . .

25 These categories appear to describe current City policies regarding the two statutes, not a
26 memorandum which may or may not be a policy and which was issued twenty (20) years ago and
27 superseded, as the moving papers note, by more current policy. The CPRA request and petition
28 cannot reasonably be interpreted as calling for the October 7, 1996 memorandum

1 As the moving papers, petitioner's counsel contacted the undersigned attorney to inquire about
2 whether the October 7th memorandum could be produced. The undersigned attorney, while believing
3 that the October 7, 1996 memo was not within the scope of the present CPRA case, agreed that if it
4 existed, it would be a "public record" and should be produced. After a diligent search, however, the
5 20 year old document cannot be located. Declaration of Gerald Sato, ¶4

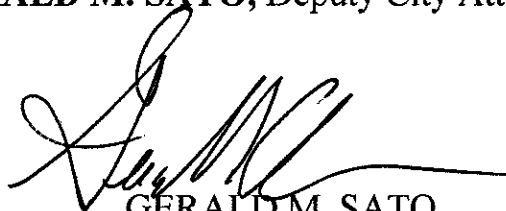
6 The petition for writ of mandate should be denied as to the October 7, 1996 LADOT
7 memorandum.

8 For all of the above reasons, the petition for writ of mandate should be denied in its entirety,
9 without prejudice to petitioner submitting a new CPRA request with specific instructions about
10 "redactions", and without prejudice to any party's discovery rights in the decades old ongoing
11 litigation regarding the City's practices and "bandit taxis". See *County of Los Angeles v. Superior*
12 *Court (Cynthia Anderson-Barker, real party in interest)* (2002) 211 Cal. App. 4th 57, 60-61.

13
14
15 DATED: September 19, 2016

16 **MICHAEL N. FEUER**, City Attorney
17 **THOMAS H. PETERS**, Chief Assistant City Attorney
18 **SCOTT MARCUS**, Senior Assistant City Attorney
19 **GERALD M. SATO**, Deputy City Attorney

20
21 By:



GERALD M. SATO

Deputy City Attorney

Attorneys for Respondent CITY OF LOS ANGELES

1 PROOF OF SERVICE

2
3 I declare that I am and was at all times herein mentioned over the age of eighteen years
4 and not a party to the action in which this service is made; that at all times herein mentioned I
5 have been employed in the County of Los Angeles and that my business address is 200 No.
6 Main Street, Room 675, CHE, Los Angeles, California 90012.

7 On September 19, 2016, I served the following document(s) described as:

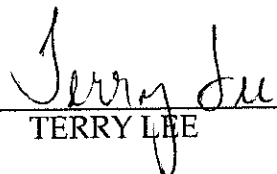
8 **MEMORANDUM OF POINTS AND AUTHORITIES IN OPPOSITION TO**
9 **PETITION FOR WRIT OF MANDATE COMPELLING DISCLOSURE**
10 **OF PUBLIC RECORDS ETC. (Gov. Code §6258)**

11 [X] BY U.S. MAIL – placed the envelope for collection and mailing, following our ordinary
12 business practices. I am readily familiar with this business' practice for collecting and
13 processing correspondence for mailing. On the same day that correspondence is
14 placed for collection and mailing. It is deposited in the ordinary course of business
15 with the United States Postal Service, in a sealed envelope with postage fully prepaid
16 addressed as follows:

17 **Donald W. Cook, Esq.**
18 **3435 Wilshire Boulevard, Suite 2910**
19 **Los Angeles, CA 90010**

20 I declare under penalty of perjury under the laws of the State of California that
21 the foregoing is true and correct.

22 Executed on September 19, 2016, at Los Angeles, California.

23
24 
25 TERRY LEE
26
27
28